

ASSEMBLY BILL

No. 1335

Introduced by Assembly Member Vargas

February 22, 2005

An act to add Chapter 5 (commencing with Section 43950) to Division 4 of Title 4 of the Government Code, relating to cities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1335, as introduced, Vargas. Cities: community benefit districts.

Existing law authorize cities and counties to establish various districts and other entities to provide improvements and other benefits within their jurisdiction.

This bill would establish a procedure for a city to form and operate community benefit districts and to levy assessments for the support of those districts.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 5 (commencing with Section 43950) is
2 added to Division 4 of Title 4 of the Government Code, to read:

3
4 CHAPTER 5. COMMUNITY BENEFIT DISTRICTS

5
6 43950. As used in this chapter the following terms shall have
7 the following meanings:

1 (a) “Activities” that benefit real property located in the
2 neighborhood council district, means, but is not limited to, all of
3 the following:

4 (1) Promotion of public events that benefit residential or
5 mixed-use buildings or real property in the district.

6 (2) Furnishing of music in any public place within the district.

7 (3) Promotion of district or neighborhood identity within the
8 area.

9 (4) Marketing, planning, zoning, and economic development,
10 including business retention and recruitment.

11 (5) Providing security, sanitation, graffiti removal, street and
12 sidewalk cleaning and other municipal services supplemental to
13 those normally provided by the municipality.

14 (b) “Improvement” means the acquisition, construction,
15 installation, or maintenance of any tangible property with an
16 estimated useful life of five years or more including, but not
17 limited to, parking facilities, benches, booths, kiosks, display
18 cases, pedestrian shelters and signs, trash receptacles and public
19 restrooms, lighting and heating facilities, decorations, fountains,
20 planting areas, minor modification of existing streets, facilities or
21 equipment or both, to enhance security of persons and property
22 within the area, ramps, sidewalks, plazas, town centers or
23 pedestrian malls, rehabilitation or removal of existing public
24 structures, installation or planting of landscaping, the installation
25 or construction of statuary, fountains and other ornamental
26 structures and facilities, and the installation or construction of
27 any facilities that are appurtenant to any of the foregoing or that
28 are necessary or convenient for the maintenance or servicing
29 thereof, including, but not limited to, grading, clearing, removal
30 of debris, the installation or construction of curbs, gutters, walls,
31 sidewalks or paving, or water, irrigation, drainage or electrical
32 facilities.

33 (c) “Maintain” or “maintenance” means the furnishing of
34 services and materials for the ordinary and usual maintenance,
35 operation, and servicing of any improvement, including the
36 following:

37 (1) Repair, removal, or replacement of any part of the
38 improvement.

1 (2) Providing for the life, growth, health, and beauty of
2 landscaping including cultivation, irrigation, trimming, spraying,
3 fertilization, or treating for disease or injury.

4 (3) The removal of trimmings, rubbish, debris, and other solid
5 waste.

6 (4) The cleaning, sandblasting, and painting of walls and other
7 improvements to remove or cover graffiti.

8 43951. Whenever the public interest or convenience may
9 require, a city council, acting under the authority conferred upon
10 it by this chapter, may order the improvement, maintenance, and
11 activities of specifically defined neighborhood and mixed use
12 commercial districts of the city within designated neighborhood
13 councils areas. The city shall determine and declare the property
14 owners to be benefited by the improvement, maintenance, and
15 activities, and assess the cost and expenses of the improvements,
16 maintenance, and activities, including all expense incurred
17 incidentally, upon the lots or parcels of real property in
18 proportion to the estimated benefits to be received. The
19 procedures established shall be additional or alternative to any
20 other procedure established by ordinance or state law and shall
21 apply to any proposed district that complies with this chapter
22 whether or not any of the procedures for formation required in
23 this chapter is taken prior to the effective date that the ordinance
24 is adopted. The election to proceed under this chapter shall be
25 expressed in the ordinance of intention to form the district that
26 shall be referred to as a community benefit district.

27 43952. Upon the written petition, signed by the property
28 owners in the proposed district who will pay more than 30
29 percent of the assessments proposed to be levied, the city council
30 may initiate proceedings to form a district by the adopting of an
31 ordinance expressing its intention to form a district. The amount
32 of assessment attributable to property owned by the same
33 property owner which is in excess of 20 percent of the amount of
34 all assessments proposed to be levied, shall not be included in
35 determining whether the petition is signed by property owners
36 who will pay more than 30 percent of the total amount of
37 assessments proposed to be levied. The petition property owners
38 shall include the community benefit district plan.

1 43953. The community benefit district plan shall be submitted
2 before the city council takes any action on the establishment of a
3 district under this chapter shall contain all of the following:

4 (a) A map of the district in sufficient detail to locate each
5 parcel of property within the district.

6 (b) The neighborhood or business community name of the
7 proposed district.

8 (c) A description of the boundaries of the district, including
9 the boundaries of any benefit zones, proposed for the
10 establishment or extension of the district in a manner sufficient to
11 identify the lands included. Under no circumstances shall the
12 boundaries of a proposed district overlap with the boundaries of
13 another existing district created pursuant to this chapter. Nothing
14 in this chapter prohibits the boundaries of a district created
15 pursuant to this chapter from overlapping with other assessment
16 districts.

17 (d) The improvements and activities proposed for each year of
18 operation of the district and the maximum cost thereof.

19 (e) The total annual amount proposed to be expended for
20 improvements, maintenance, and operations.

21 (f) The proposed source or sources of financing including the
22 proposed method and basis of levying the assessment in
23 sufficient detail to allow each property owner to calculate the
24 amount of the assessment to be levied against his or her property,
25 including a statement setting forth the requirement to provide
26 completion bonds for any improvements which are proposed to
27 be constructed.

28 (g) The time and manner of collecting the assessments.

29 (h) Any proposed rules and regulations to be applicable to the
30 district.

31 (i) A statement, placed in a conspicuous place of the
32 community benefit district plan, stating that assessments for the
33 maintenance of improvements constructed by the district, if any,
34 shall continue to be levied on each parcel of land within the
35 district for a period of time equal to the useful life of the
36 improvement, as determined by the city clerk, regardless of
37 whether the district is dissolved or the term of the original levy
38 has expired.

39 43954. (a) The city council shall identify all parcels that will
40 have a special benefit conferred upon them and upon which an

1 assessment will be imposed. The proportionate special benefit
2 derived by each identified parcel shall be determined in
3 relationship to the entirety of the capital cost of a public
4 improvement or the maintenance and operation expenses of a
5 public improvement or for the cost of the property service being
6 provided. No assessment shall be imposed on any parcel that
7 exceeds the reasonable cost of the proportional special benefit
8 conferred on that parcel. Only special benefits are assessable, and
9 the city council shall separate the general benefits from the
10 special benefits conferred on a parcel. Parcels within a district
11 that are owned or used by any governmental agency, the state, or
12 the United States shall not be exempt from assessments unless
13 the city council demonstrates by clear and convincing evidence
14 that the publicly owned parcels in fact receive no special benefit.

15 (b) All assessments shall be supported by a detailed engineer's
16 report prepared by a registered professional engineer certified by
17 this state.

18 (c) The amount of the proposed assessment for each identified
19 parcel shall be calculated and the record owner of each parcel
20 shall be given written notice by mail of the proposed assessment,
21 the total amount thereof chargeable to the entire district, the
22 amount chargeable to the owner's particular parcel, the duration
23 of the payments, the reason for the assessment and the basis upon
24 which the proposed assessment was calculated together with the
25 date, time, and location of a public hearing or, the proposed
26 assessment.

27 (d) Each notice shall also include, in a conspicuous place
28 thereon, a summary of the procedures applicable to the
29 completion, return, and tabulation of the ballots required
30 including a disclosure statement that the existence of a majority
31 protest will result in the assessment not being imposed.

32 (e) Each notice mailed to owners of identified parcels within
33 the district shall contain a ballot that includes the agency's
34 address for receipt of a ballot once completed by any owner
35 receiving notice whereby each owner may indicate his or her
36 name, reasonable identification of the parcel, and support or
37 opposition to the proposed assessment.

38 (f) The city council shall conduct a public hearing upon the
39 proposed assessment not less than 45 days after mailing the
40 notice of the proposed assessment to record owners of each

1 identified parcel. At the public hearing, the agency shall consider
2 all protests against the proposed assessment and tabulate the
3 ballots. The city council shall not impose an assessment if there
4 is a majority protest. A majority protests exists if, upon the
5 conclusion of the hearing, ballots submitted in opposition to the
6 assessment exceed the ballots submitted in favor of the
7 assessment. In tabulating the ballots, the ballots shall be weighted
8 according to the proportional financial obligation of the affected
9 property.

10 43955. (a) Before the city council may establish a district
11 pursuant to the chapter, the city council shall pass on ordinance
12 declaring its intention to do so. The ordinance, in addition to all
13 other matters it is herein required to contain, shall briefly
14 describe the proposed improvements, state the period of time,
15 which shall not exceed 20 years, for which the proposed
16 improvements are to be made, and contain a description of the
17 district to be benefited thereby and to be assessed to pay the costs
18 and expenses thereof.

19 (b) The ordinance of intention shall further do all of the
20 following:

21 (1) State that a district is proposed to be established pursuant
22 to this chapter and describe the boundaries of the proposed
23 district and the boundaries of each separate benefit zone to be
24 established within the district. The boundaries may be described
25 by reference to the map and description contained in the
26 preliminary report of the city clerk on file in the office of the city
27 clerk.

28 (2) State the name of the proposed district.

29 (3) State the type or types of improvements and activities
30 proposed to be funded by the levy of assessments on property
31 owners within the district, including any improvements to be
32 acquired.

33 (4) State the amount of the proposed assessment for the entire
34 district, the duration of the payments, the reason for the
35 assessment and the basis upon which the proposed assessment
36 was calculated.

37 (5) State the date, time, and location of a public hearing on the
38 proposed assessment.

39 (6) Include a ballot as described in Section 43954.

1 (7) State, in a conspicuous place, a summary of the procedures
2 applicable to the completion, return, and tabulation of the ballots,
3 including a disclosure statement that the existence of a majority
4 protest will result in the assessment not being imposed.

5 (8) State that at the public hearing the testimony of all
6 interested persons for or against the establishment of the district,
7 the boundaries of the district, or the furnishing of specified types
8 of improvements or activities will be heard.

9 (9) Refer to the preliminary report of the city clerk on file in
10 the office of the city clerk.

11 (10) State the manner of collection of the assessment.

12 43956. Before the city council may take any action on the
13 ordinance of intention, the city clerk shall prepare and file a
14 report in writing, proposing that the proceeding be commenced
15 as requested in the petition, designating the plans and
16 specifications of the proposed maintenance, improvements, and
17 activities for the proposed district and an estimate of the cost and
18 expenses of the work for each year during which the proposed
19 work will be done.

20 The report shall include a certified engineer's report stating the
21 district establishment is consistent with the provisions of Article
22 XIII of the California Constitution in that each lot or parcel
23 within the district to be assessed is being assessed in proportion
24 to the estimated benefit to be received, and containing a diagram
25 showing the boundaries of the proposed assessment district and
26 each lot or parcel of land within the district proposed to be
27 assessed.

28 43957. Upon a demonstrated show or support, through
29 petition, of a least 30 percent of the weighted property owners
30 who will pay into the proposed community benefit assessment
31 district, the city clerk will bring the issue of the proposed district
32 to the committee as may be designated by the city council. Upon
33 review of the city clerk's office and approval of the designated
34 committee the proposed district with the ordinance of intention
35 shall be sent to the city council for consideration.

36 Upon the recommendations of the designated committee and
37 the filing of the report, the city clerk shall present the report to
38 the city council for its consideration and the city council may
39 approve, correct, or modify the report in any respect, or may
40 direct the city clerk to make changes therein. When the report has

1 been approved, or approved as modified and corrected, the city
2 council may pass an ordinance declaring its intention to establish
3 the district.

4 43958. (a) A complete copy of the ordinance of intention
5 shall be mailed by first-class mail to each property owner in the
6 proposed district, and to each neighborhood council known by
7 the city council to be located within the proposed district, no later
8 than 45 days before the public hearing.

9 (b) In addition to first-class mailed notice of each property
10 owner within the proposed district, the city council shall publish
11 the ordinance of intention in a newspaper of general circulation
12 in the city once, at least seven days before the public hearing.

13 43959. At any time prior to the date set for hearing protests,
14 any person affected by the proposed assessment may make
15 written protest stating his or her objections. The protests shall
16 contain the information contained in the ballot mailed to the
17 property owner in sufficient detail to allow the city clerk to
18 identify the owner, the parcel, and the amount of the proposed
19 assessment.

20 At the time set for hearing protests, or at any time to which the
21 hearing may be continued, the city council shall proceed to hear
22 and pass on all protests. The city council shall not impose an
23 assessment if there is a majority protest. A majority protest exists
24 if, upon the conclusion of the hearing, ballots submitted in
25 opposition to formation of the proposed assessment exceed the
26 ballots submitted in favor of the assessment. The ballots shall be
27 weighed in proportion to the assessment upon the affected
28 property.

29 43960. Following adoption of the ordinance of intention, the
30 city clerk shall record a notice and map describing the
31 assessment district pursuant to Division 4.5 (commencing with
32 Section 3100) of the Streets and Highways Code. All the
33 provisions of that division apply to the district established
34 pursuant to this chapter.

35 43961. Not earlier than 30 days after the adoption of the
36 ordinance of intention to establish the proposed district, and if
37 there is no majority protest as described in Section 43959, and
38 after the effective date of the ordinance of intention, the city
39 council shall adopt an ordinance consistent with the ordinance of
40 intention.

1 The adoption of the ordinance establishing the district and
2 levying the assessment, and recordation of the notice and map,
3 shall constitute the levy of an assessment in each of the fiscal
4 years referred to in the community benefit district plan. This
5 ordinance shall contain all of the following:

6 (a) A summary of the community benefit district plan.

7 (b) The number, date of adoption, and title of the ordinance of
8 intention.

9 (c) The time and place where the public hearing was held
10 concerning the establishment of the district or the levying of a
11 new assessment.

12 (d) A determination regarding any protests received.

13 (e) A statement that a district has been established.

14 (f) A statement that the improvements and activities to be
15 provided to the district will be funded by the levy of assessments.
16 The revenue from the levy of assessments within a district shall
17 not be used to provide improvements or activities outside the
18 district or for any purpose other than the purposes specified in the
19 ordinance of intention, as approved, or as modified and
20 approved, by the city council at the hearing concerning the
21 establishment of the district.

22 (g) A finding that the property within the district will be
23 benefited by the improvements and activities funded by the
24 assessment to be levied.

25 (h) A statement, if applicable, that a completion bond will be
26 required for any improvements constructed by the district and
27 that a continuing assessment in an amount sufficient to maintain
28 the improvement throughout its useful life, as determined by the
29 city clerk, will be levied on each parcel within the district
30 regardless of whether the district is dissolved or the term of the
31 original levy has expired.

32 43962. The validity of an assessment levied under the
33 provisions of this chapter shall not be contested in any action or
34 proceeding unless the action to contest is commenced within 30
35 days after the time the assessment is levied, and any appeal from
36 a final judgment in the action or proceeding shall be perfected
37 within 30 days after entry of the judgment.

38 43963. The city shall make accommodations to provide for
39 self-administration of the district by the parcel owners paying

1 into the district. The city clerk may contract with a nonprofit
2 corporation to manage the district on a day-to-day basis.

3 43964. The city may advance funds for the first quarter of a
4 new district so that the district may commence work prior to the
5 initial collection of the assessments. The funds advanced may not
6 exceed one-quarter of the assessment for the first year. The funds
7 advanced shall then be deducted from the first year's
8 disbursement.

9 43965. The collection assessments levied pursuant to this
10 chapter shall be made at the time and in the manner set forth by
11 the city council in the ordinance of intention. The assessment
12 may be collected at the same time and in the same manner as for
13 the ad valorem property tax, and may provide for the same lien
14 priority and penalties for delinquent payment.

15 43966. The management corporation shall cause to be made
16 on an annual basis, a report that shall explain the results of the
17 improvements and activities funded by the district.

18 (a) The report shall be filed with the city clerk and shall refer
19 to the district by name, specify the fiscal year to which the report
20 applies, and, with respect to that fiscal year, shall contain all of
21 the following information:

22 (1) Any proposed changes in the boundaries of the district or
23 in any benefits zones within the district.

24 (2) The improvements and activities to be provided for that
25 fiscal year.

26 (3) An estimate of the cost of providing the improvements and
27 the activities for that fiscal year.

28 (4) The method and basis of levying the assessment in
29 sufficient detail to allow each real property owner to estimate the
30 amount of the assessment to be levied against his or her property
31 for that fiscal year.

32 (5) The amount of any surplus or deficit revenues to be carried
33 over from a previous fiscal year.

34 (6) The amount of any contributions to be made from sources
35 other than assessments levied pursuant to this chapter.

36 (b) The city council may approve the report as filed by the
37 management corporation or may modify any particular contained
38 in the report and approve it as modified. Any modification shall
39 be made pursuant to Section 43967. The city council shall not
40 approve a change in the basis and method of levying assessments

1 that would impair an authorized or executed contract to be paid
2 from the revenues derived from the levy of assessments.

3 43967. (a) The management corporation may, at any time,
4 request that the city council modify the community benefit
5 district plan. Any modification of the community benefit district
6 plan shall be made pursuant to this section.

7 (b) Upon the written request of the advisory board, the city
8 council may modify the community benefit district plan by
9 adopting an ordinance after holding hearings on the proposed
10 modification pursuant to Section 43959.

11 (c) The city council shall adopt an ordinance of intention that
12 states the proposed modification prior to the public hearing
13 required by this section. The public hearing shall be held not
14 more than 60 days after the adoption of the ordinance of
15 intention. Notice of the public hearing shall be provided in
16 Section 43958. The public hearing shall be conducted as
17 provided in Section 43959.

18 (d) The city council may modify the improvements and
19 activities to be funded with the revenue derived from the levy of
20 the assessments by adopting an ordinance determining to make
21 the modifications after holding a public hearing on the proposed
22 modifications. Notice of the public hearing and the proposed
23 modifications shall be published as provided in Section 43958.

24 (e) The public hearing shall be conducted as provided in
25 Section 43959.

26 (f) Any subsequent modification of the ordinance shall be
27 reflected in subsequent notices and maps recorded pursuant to
28 Division 4.5 (commencing with Section 3100) of the Streets and
29 Highways Code.

30 43968. (a) Any district established or extended pursuant to
31 the provisions of this chapter, where there is no indebtedness,
32 outstanding and unpaid, incurred to accomplish any of the
33 purposes of the district, may be dissolved by ordinance of the
34 city council in either of the following circumstances:

35 (1) If the city council finds there has been misappropriation of
36 funds, malfeasance, or a violation of law in connection with the
37 management of the district, it shall notice a hearing on
38 disestablishment. The notice and hearing shall be held pursuant
39 to Sections 43958 and 43959.

(2) During the operation of the district, there shall be a 30-day period each year in which assesses may request dissolution of the district. The first period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners of real property in the area who pay 30 percent or more of the assessments levied, the city council shall enact an ordinance of intention to dissolve the district. The city council shall notice a hearing on disestablishment. The notice and hearing shall be held pursuant to Sections 43958 and 43959. In the event that the district has constructed any improvements, an amount of assessment equal to the amount needed to maintain the improvements through its useful life, as determined by the city clerk, shall continue to be levied upon each parcel in the district after dissolution of the district.

(b) The city council shall adopt an ordinance of intention to dissolve the district prior to the public hearing required by this section. The ordinance shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The public hearing shall be held not less than 30 or more than 60 days after the adoption of the ordinance of intention. Notice of the public hearing shall be published as provided in Section 43958.

(c) Upon the dissolution of a district, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be refunded to the owners of the property then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district was disestablished, other than amounts needed to maintain any improvements constructed by the district. If the dissolution occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessment levied in the immediate prior fiscal year shall be used to calculate the amount of refund.

1 (d) Notice of the dissolution of a district shall be published
2 once in a newspaper of general circulation in the city, not later
3 than 15 days after the ordinance disestablishing the district is
4 adopted.

O